UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

RUSSELL SCHUMEL, ALEX JAMES KOWALSKI and HOLLY KAY KOWALSKI, Individually And On Behalf Of All Others Similarly Situated,

Plaintiffs,

v.

BANK MUTUAL CORPORATION, MICHAEL T. CROWLEY, JR., DAVID A. BAUMGARTEN, RICHARD A. BROWN, MARK C. HERR, MIKE I. SHAFIR, DAVID C. BOERKE, LISA A. MAUER, ROBERT B. OLSON, THOMAS H. BUESTRIN, WILLIAM J. MIELKE and ASSOCIATED BANC-CORP,

Defendants.

Case No.

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446, and 1453, as amended in relevant parts by the Class Action Fairness Act of 2005 ("CAFA"), Defendant Associated Banc-Corp ("Associated"), by its counsel, hereby removes to this Court the above-styled putative class action, pending as Case No. 2017-cv-006201 in the Circuit Court of Milwaukee County, Wisconsin (the "State Court Action"). Associated believes that Plaintiffs' claims are without merit and will dispute them at the appropriate time, but for purposes of removal state as follows:

I. NATURE OF THE ACTION

1. Pursuant to a Complaint filed on July 27, 2017, Plaintiffs Russell Schumel, Alex James Kowalski, and Holly Kay Kowalski ("Plaintiffs") commenced the State Court Action against Associated, Bank Mutual Corporation ("Bank Mutual"), Michael T. Crowley, Jr., David

A. Baumgarten, Richard A. Brown, Mark C. Herr, Mike I. Shafir, David C. Boerke, Lisa A. Mauer, Robert B. Olson, Thomas H. Buestrin, and William J. Mielke (the "Individual Defendants" and, collectively, with Associated and Bank Mutual, "Defendants") in the Circuit Court of Milwaukee County. A copy of the Schumel Complaint is attached as Exhibit 1 hereto.

2. Plaintiffs claim to be Bank Mutual shareholders.

3. Defendant Bank Mutual is a Wisconsin corporation with its principal headquarters in Milwaukee, Wisconsin.

4. The Individual Defendants are directors of Bank Mutual.

5. Defendant Associated is a Wisconsin corporation with its principal headquarters in Green Bay, Wisconsin.

6. There are currently pending in state court two other putative class actions arising out of the same facts: *Thomas L. Paquin, et al. v Bank Mutual Corp., et al.*, Case No. 2017-cv-006202; and *Fred Wollenburg v. Bank Mutual Corp., et al.*, Case No. 2017-cv-007312. Copies of these cases are attached as Exhibits 2 and 3, respectively.

7. Associated is simultaneously filing Notices of Removal for all three state court actions.

8. Pursuant to a Stipulation dated September 5, 2017 and filed with the Circuit Court of Milwaukee County on or about September 6, 2017, the parties stipulated that the three state court actions be consolidated. A copy of the Stipulation is attached as Exhibit 4. (Although the Stipulation has been filed in all three state court cases, to date no order consolidating the three cases has been entered.) Pursuant to that Stipulation, Plaintiffs designated the *Wollenburg* complaint as the Operative Complaint in the consolidated action, Ex. 4, ¶ 3, and Associated

agreed to accept service of that Operative Complaint as of the date the Stipulation was filed with the court (which, as noted above, was September 6). *Id.*, ¶ 5.

9. On September 6, 2017, another putative class action arising out of the same facts that form the basis for the three state court actions was commenced in the United States District Court for the Eastern District of Wisconsin, *Paul Parshall v. Bank Mutual Corp., et al.*, Case No. 2017-cv-001209.

10. Like the *Schumel* and *Paquin* complaints, the Operative Complaint alleges that on July 20, 2017, it was announced that Bank Mutual and Associated had entered into an agreement pursuant to which each share of Bank Mutual common stock will be converted into the right to receive 0.422 shares of Associated common stock (the "Merger Consideration"). Ex. 3, ¶ 2. The Operative Complaint alleges that, based on Associated's July 19, 2017 closing stock price of $24.60 per share, the all-stock transaction was valued at approximately $482 million. Ex. 3, ¶¶ 2, 44. The Operative Complaint further alleges that the Merger Consideration "is inadequate and undervalues" Bank Mutual. Ex. 3, ¶ 45.

11. Plaintiffs assert state law causes of action for breach of fiduciary duty (against the Individual Defendants), *see* Ex. 3, ¶¶ 78-83, and for aiding and abetting (against Associated and Bank Mutual), *see id.*, ¶¶ 84-87.

12. Plaintiffs purport to bring this action as a class action on behalf of themselves and "all other holders of Bank Mutual common stock who are being and will be harmed" by the Defendants' actions. Ex. 3, ¶ 34.

13. Plaintiffs allege that there are "approximately 45,932,253 outstanding shares of Bank Mutual common stock. Ex. 3, ¶ 35(a).

14. Plaintiffs seek declaratory and injunctive relief, including an injunction preventing consummation of and/or rescinding the merger, as well as an accounting for damages. Ex. 3, p. 2, ¶ 8; pp. 27-28.

II. GROUNDS FOR REMOVAL

15. Associated removes this action under CAFA, 28 U.S.C. §§ 1332(d) and 1453 on the grounds that: (1) at least one member of the proposed class is a citizen of a State different from any defendant (*i.e.*, minimal diversity exists); (2) the proposed class consists of more than 100 members; and (3) the amount in controversy is $5 million or more, aggregating all claims and exclusive of interests and costs. *See* 28 U.S.C. §§ 1332(d)(2), 1332(5)(B).

A. Minimal Diversity

16. CAFA requires only minimal diversity, namely that "*any member of a class* of plaintiffs is a citizen of a State different from any defendant[.]" 28 U.S.C. § 1332(d)(2)(A) (emphasis added). Associated is a citizen of Wisconsin. *See* Ex. 3, ¶ 22.

17. Plaintiffs do not allege their state(s) of citizenship. *See* Ex. 1, ¶¶ 12-14. However, Plaintiff Paul Parshall in the pending federal action alleges both that he is a Bank Mutual shareholder and that he is a resident of Florida. *See* Case No. 2017-cv-001209, dkt. 1, ¶ 8. Moreover, as listed in the summons in the *Paquin* state court case, the address of one of the Plaintiff-Shareholders, David Birkholz, is located in Minnesota. Upon information and belief, both are citizens of the states in which they reside. Upon further information and belief, many other of the over 45 million shares outstanding are owned by citizens of states other than Wisconsin. There is no doubt that the minimal diversity requirements of CAFA are satisfied here. 28 U.S.C. § 1332(d)(2)(A).

B. Number of Class Members

18. Plaintiffs purport to bring this action on behalf of a class of shareholders owning over 45 million shares and allege that the number of shareholders in the putative class "is so numerous that joinder is impracticable." Ex. 3, ¶¶ 34, 35. Upon information and belief, such shares are held by far more than 100 persons.

C. Amount in Controversy

19. Based on the allegations of the Operative Complaint, the aggregate amount in controversy for purposes of determining CAFA jurisdiction exceeds $5 million, exclusive of interests and costs. *See* 28 U.S.C. § 1332(d)(2). Plaintiffs seek to enjoin a merger whose implicit value to Bank Mutual shareholders exceeds $482 million. Ex. 3, ¶¶ 2, 44. They seek to rescind the agreement, which includes certain contractual protections, one of which is a termination fee valued at $17 million. Ex. 3, ¶ 57, pp. 27-28. They also seek unspecified money damages. Ex. 3, p. 2; ¶ 8; pp. 27-28.

20. Associated need only establish a "reasonable probability that the stakes exceed" $5 million *Home Depot, Inc. v. Rickher*, 2006 U.S. App. LEXIS 32391, at *2-3 (7th Cir. May 22, 2006) (quotation omitted). "The question is not what damages the plaintiff will recover, but what amount is 'in controversy' between the parties." *Id.* at *3.

21. Here the Operative Complaint seeks to enjoin the proposed merger based on the allegation that the implied value of Bank Mutual shares is inadequate and undervalues the company. Ex. 3, ¶¶ 2, 45. Plaintiffs allege that there are currently 45,932,253 million outstanding shares of Bank Mutual stock. Ex. 3, ¶ 35(a). Given the number of shares, less than eleven cents per share of alleged undervaluation would exceed $5 million ($5 million ÷ 45,932,253 = $.10885597).

22. In addition, the value of the termination fee to Associated that Plaintiffs seek to rescind is alleged to be $17 million. Ex. 3, ¶¶ 4, 57.

23. Accordingly, while Associated denies that Plaintiffs and members of the putative class are entitled either to an injunction, rescission, or any damages, the recovery alleged by Plaintiffs on behalf of the class exceeds $5 million. 28 U.S.C. § 1332(d)(2).

III. COMPLIANCE WITH REMOVAL STATUTE

24. Removal to Proper Court. The Notice of Removal was properly filed in the United States District Court for the Eastern District of Wisconsin, because the Circuit Court for Milwaukee County, Wisconsin is located in this federal judicial district. *See* 28 U.S.C. § 1441(a).

25. Proper Signature. The Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure. *See* 28 U.S.C. § 1446(a).

26. Removal is Timely. This Notice of Removal is timely under 28 U.S.C. § 1446(b), as it is filed within 30 days of September 6, 2017 when Associated accepted service of a copy of the Operative Complaint, and no other copy was previously served on Associated. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999).

27. Pleadings and Process. 28 U.S.C. § 1446(a) requires Associated to file a copy of all process, pleadings, and orders that have been served upon them. The only process served upon Associated, and then through Stipulation, is the Operative Complaint, Ex. 3.

28. Filing and Service. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon counsel for Plaintiffs and a copy, along with a Notice of Filing of the Notice of Removal, is being filed with the Clerk of the Circuit Court for Milwaukee County, Wisconsin.

29. No Consent Needed. Under CAFA, Bank Mutual and the Individual Defendants need not consent to removal. *See* 28 U.S.C. § 1453(b) ("A class action may be removed to a district court of the United States in accordance with section 1446 . . . except that such action may be removed by any defendant without the consent of all defendants.").

30. Removal Under CAFA is Appropriate. Plaintiffs' claims do not "solely involve[]" a claim that concerns a covered security, relates to the internal affairs or governance of a corporation, or relates to the rights, duties, and obligations (including fiduciary duties) created by or pursuant to any security and, hence, are not excepted from removal under CAFA, 28 U.S.C. § 1453(d)(1), because the Operative Complaint (as well as the other state law complaints) posits a claim against Associated for aiding and abetting, which arises under tort or contract law and not securities law. *See Himmel v. Bucyrus International, Inc.*, E.D. Wis. Case No. 10-C-1104, dkt. 55 (Slip Op. Aug. 23, 2011) (order denying plaintiff's motion to remand).

WHEREFORE, Associated respectfully removes this action, now pending in the Circuit Court for Milwaukee County, Wisconsin, to the United States District Court for the Eastern District of Wisconsin.

Dated: September 13, 2017

Respectfully submitted,

s/ Howard A. Pollack

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